



IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

NO. 78-1589

TOM BENSON CHEVWAY RENTAL & LEASING, INC.,
Petitioner

VS.

KENNETH WAYNE ALLEN, ET UX,
Respondents

**PETITIONER'S BRIEF IN REPLY TO
RESPONDENTS' BRIEF IN OPPOSITION**

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**TO THE SUPREME COURT OF THE UNITED
STATES:**

Pursuant to U.S. Sup. Ct. R. 24-4, Petitioner hereby submits its brief in reply to Respondents' brief in opposition.

Respondents assert that petitioner is merely seeking an evidentiary review by this Court. Their asser-

tion is unsound. The principal fact in this case is that the parties made an agreement, the terms of which they set forth in writings made a part of the evidence in this case. The petitioner does not dispute this fact. One of the federal questions in this case is whether the Truth in Lending Act, construed in light of the Consumer Leasing Act of 1976 and the legislative history of both acts, applies to or covers the transaction or agreement between the parties. This Court can determine "whether governing rules of federal law have been properly applied to the facts." *New York Times Co. v. Sullivan*, 376 U.S. 254, 285 n. 26 (1964). For example, in February this Court decided *Group Life & Health Ins. Co. v. Royal Drug Co.*, 99 S. Ct. 1067 (1979), in which the federal question was whether "these Pharmacy Agreements are not the 'business of insurance' within the meaning of § 2(b) of the McCarran-Ferguson Act." *Id.*, 99 S. Ct. at 1072. The federal question there is similar to the federal questions here.

Respondents rely upon a provision in the lease that:

Lessee may sell vehicle or Lessor may sell it at termination of lease. Proceeds over book value remitted 100% to lessee; any deficiency under book value is assumed by Lessee.

Their reliance on that provision as the basis for application of the Truth in Lending Act is, however, misplaced. As Petitioner pointed out (Pet. for Cert. at 23-24), Congress was concerned with one of the common forms of open-end leases called finance leases "which guarantees the lessor a specified return, or guarantees him in whole or in part against loss of income. This type of lease is the most widely used form of lease for motor vehicles. Under such a lease, the lessor contracts with a lessee that the lessee meet

monthly rental payments which are designed both to reimburse the lessor for the reduction in market value of his vehicle (i.e., depreciation) and to provide him with a specified return.

"At the expiration of such a lease, the vehicle is sold. If the vehicle is sold for less than its depreciated value, as originally estimated, the lessee is responsible for reimbursing the lessor for the difference between this value and the sales price. Conversely, if the vehicle is sold for more than such depreciated value, the lessee receives the excess as a retrospective adjustment in rent."

Then, as Petitioner pointed out (Pet. for Cert. at 25), Congress enacted the Consumer Leasing Act of 1976 which it intended to apply "to any lease . . . agreement respecting personal property [that] is for a fixed term [and that] is . . . a so-called financing lease (where the lessee's obligation is to pay the full market value of the leased goods)."

Respectfully submitted,
/s/ CARL ROBIN TEAGUE
Carl Robin Teague